

tribal regulation alone, with no federal or state input.⁵⁴ Class II gaming includes bingo and non-casino card games played entirely in accordance with state law; such gaming is subject to tribal regulation with federal oversight, but with no input from the states.⁵⁵ “[A]ll forms of gaming that are not class I gaming or class II gaming” are considered class III gaming.⁵⁶ This includes casino-style gaming such as blackjack, keno, and roulette, as well as slot machines and video poker games. Class III gaming is subject to both state and federal control. The Hudson casino application was a proposal to conduct Class III gaming.

Under IGRA, tribes that wish to conduct Class III gaming on reservations must fulfill three requirements. First, the tribal government must adopt an ordinance authorizing such gaming, and that ordinance must be approved by the National Indian Gaming Commission.⁵⁷ Second, the land on which the gaming is to occur must be “located in a State that permits such gaming for any purpose by any person, organization, or entity.”⁵⁸ Finally, the tribe must negotiate a “Tribal-State compact” with the state in which the land is located; that agreement

⁵⁴25 U.S.C. §§ 2703(6) and 2710(a)(1) (1995).

⁵⁵25 U.S.C. §§ 2703(7), 2710(b) (1995).

⁵⁶25 U.S.C. § 2703(8) (1995).

⁵⁷25 U.S.C. § 2710(d)(1)(A) (1995). The National Indian Gaming Commission (NIGC) is a federal commission created under IGRA. NIGC’s approval of tribal ordinances and financial agreements governing the operation of casinos is independent of DOI’s analysis of applications under IRA and IGRA. NIGC review can be sought simultaneously, but cannot be concluded until after DOI takes the land into trust because NIGC jurisdiction is generally limited to agreements and ordinances affecting land held in trust for Indians or land owned by Indians.

⁵⁸25 U.S.C. § 2710(d)(1)(B) (1995).